(1) 95-1104

No. _____

Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

KENNETH J. OWEN,

Petitioner,

v.

THE STATE BAR OF CALIFORNIA AND
THE COMMITTEE OF BAR EXAMINERS,

Respondent.

On Petition For Writ Of Certiorari
To The
SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

KENNETH J. OWEN
IN PRO PER
6098 Slopeview Court
Castro Valley, CA 94552
Telephone: (510) 582-0540

29 pp

QUESTIONS PRESENTED

I. Did the State of California err by not providing Petitioner some kind of hearing before Petitioner was deprived of his right to practice law in California, in contravention of the Due Process Clause of the Fourteenth Amendment?

II. Is California Business & Professions Code, section 6060(g) invalid as applied, in contravention of the Equal Protection Clause of the Fourteenth Amendment?

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

Petitioner, KENNETH OWEN, respectfully preys that a writ of certiorari issue to review an order of the Supreme Court of the State of California denying a Petition for Writ of Review.

OPINIONS BELOW

No written opinions have been issued in this case. A letter issued by the Committee of Bar Examiners of the State Bar of California appears in Appendix A to this Petition.

JURISDICTION

The Supreme Court of the State of California's Order denying a Petition for Writ of Review was filed on October 4, 1995 and is set forth in Appendix B.

This Court's jurisdiction is invoked under 28 U.S.C. section 1257(a). "A state supreme court's decision on an individual application can be reviewed only by the United States Supreme Court on writ of certiorari. (Citations omitted)" Tofano v. Supreme Court of Nevada, 718 F.2d 313, 314 (9th Cir. 1983).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The Petitioner ("Owen") attended Oakland College of Law in 1993-1994 and successfully completed one year of law study with a grade point average of 3.0. Petitioner made the Dean's List of Honor Students. Oakland College of Law has been authorized by the State of California to grant Juris Doctorate degrees pursuant to California Education Code, section 94310.

Unfortunately, Oakland College of Law is not accredited by the Committee of Bar Examiners of the State Bar of California ("Committee"). Pursuant to California Business and Professions Code section 6060(g), students attending unaccredited law schools are required to take and pass a First Year Law Students Examination ("FYLSX") administered by the Committee.

Business & Professions Code, section 6060(g) provides in part:

> After completion of his or her first year of law study, have passed a first-year law student's examination given by the examining committee. This requirement does not apply to a student who satisfactorily completes the first-year course of instruction in a law school accredited by the examining committee ... An applicant who is required to take the first-year examination shall not receive

> credit for his or her first year of law study until he or she has passed that examination: nor shall he or she receive credit for any law study subsequent to the first year ...

Petitioner took the June 1994 FYLSX, and received a Total Scaled Score of 537.43. Pursuant to the Rules Regulating Admission to Practice Law in California, Rule VIII, Section 1(b) "The passing grade shall be 70% of the highest possible grade." On the FYLSX, a score of 800 is possible, therefore a score of 560 is passing. According to the Committee, the Petitioner did not pass. Petitioner took the October 1994 FYLSX and received a Total Scaled Score of 537.5. According to the Committee,the Petitioner again did not pass.

In January 1995, Petitioner wrote to California State Assemblymember Sweeney, seeking reconsideration by the Committee of his grades on the FYLSX. On January 23, 1995, the Director of Examinations denied Petitioner's request. Petitioner then formally petitioned the full Committee of Bar Examiners for certification as having passed the FYLSX.

The Committee met secretly in a closed hearing on March 25, 1995. Petitioner was not invited or allowed to attend the hearing. The Committe responded by letter dated March 28,1995, denying Petitioner's request for reconsideration. See Appendix A. Petitioner then timely filed a Petition for Writ of Review in the California Supreme Court.

Pursuant to California Rules of Court, Rule 951(g) and Rule 952(d), the Supreme Court has original and exclusive jurisdiction of attorney admissions and discipline. The issues presented to the California Supreme Court were:

1. Has the Committee committed fraud in the administration of the FYLSX?

2. Has the Committee invidiously discriminated against students attending unaccredited law schools?
3. Has the Committee unlawfully and arbitrarily fabricated scaling formulas for the FYLSX which are designed to fail qualified students?
4. Has the Committee acted in a manner that contravenes the Due Process and Equal Protection Clause of the Fourteenth Amendment?

On October 4, 1995, the Supreme Court of California, without a hearing, summarily DENIED Owen's Petition for Writ of Review. See Appendix B.

REASONS FOR GRANTING THE WRIT

I. DUE PROCESS

The Supreme Court of the State of California abused its discretion by not providing the Petitioner the most basic of hearings to resolve Petitioner's complaint. The issues presented to the Committee and Supreme Court were essentially that the Committee was guilty of illegally, erroneously, and fraudulently administering the FYLSX. Owen provided an overwhelming amount of evidence to support these allegations. (12 page Petition for Review to Supreme Court, supported by a 98 page Record on Review).

Owen believed that a "fair trial in a fair tribunal [was] a fundamental right of Due Process. (citation omitted). This applies to administrative agencies which adjudicate as well as to courts. (citation omitted). Not only is a biased decisionmaker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness.' (citation omitted)" Withrow v. Larkin, 421 U.S. 35,46-7(1975)

The main issue before this Court is not the merits of the underlying case,but the lack of any meaningful judicial adjudication being provided Petitioner in the State of California. Petitioner is confident that he would prevail on the merits if he were given a hearing. "[T]he right to a hearing does not depend on a demonstration of certain success. (citation omitted)" Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532, 544 (1985).

Unfortunately, the only court in the State of California with jurisdiction to hear this case has declined to listen to the Petitioner's complaint.

> Determinations and recommendations of the bar in matters of discipline and admission are directly reviewable in this court. Rule 952 of the Rules of Court describes the means by which such review may be sought. . . . "A petition to the Supreme Court to review any other action of the Board of Governors of the State Bar, or of any board or committee appointed by it and authorized to make a determination pursuant to the provisions of the State Bar Act, shall be filed within 60 days after written notice of the action..." (Subd. (c).) (emphasis added)
> Saleby v. State Bar of California, 39 Cal.3d 547, 557-58 (Cal. 1985)

The problem in this case is that the Committee has issued no findings of fact, and the Supreme Court has provided no hearing to review the Committee's illegal actions. For some unexplained reason, the Supreme Court ignored its own precedents in this particular case:

> We conclude that in order to comport with due process requirements applicants must be afforded an opportunity to be heard and respond to the bar's determinations and the bar

must issue sufficient findings to afford review.

The opportunity to be heard is "a fundamental requirement of due process." (emphasis added)

Saleby v. State Bar of California, 39 Cal.3d 547, 565 (Cal. 1985)

In a letter dated March 28, 1995, the Committee "concluded that there were no arithmetic or clerical errors in the calculation of [Petitioner's] examination grade nor was there any evidence of departure from established grading procedures." See Appendix A.

This conclusion is not sufficient as findings to afford any meaningful review, and is nothing more than a denial of Petitioner's allegations without any evidence to support the Committee's position.

In this case, the process Petitioner received was a determination by the Committee that it did no wrong, and then a denial of any judicial review of that determination by the Supreme Court. Even the Supreme Court of California would have to concede that those procedures do not comport with the fundamental requirements of due process.

After reviewing federal precedent, we held that "the due process safeguards required for protection of an individual's statutory interests must be analyzed in the context of the principle that freedom from arbitrary adjudicative procedures is a substantive element of one's liberty. [Citation.]" (emphasis added)

Saleby v. State Bar of California, 39 Cal.3d 547, 565 (Cal. 1985).

A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause

of the Fourteenth Amendment. (emphasis added)
Schware v.Board of Bar Exam of State of N.M.,
353 U.S. 232, 238-239 (1957)
And when Congress has given an administrative agency discretion to determine its own procedure, the agency has rarely chosen to dispose of the rights of individuals without a hearing, however informal.16/

The heart of the matter is that democracy implies respect for the elementary rights of men, however suspect or unworthy; a democratic government must therefore practice fairness; and fairness can rarely be obtained by secret,one-sided determination of facts decisive of rights. 17/ (emphasis added)
Joint Anti-fascist Refugee Committee v. McGrath,
341 U.S.123, 168-170 (1951)
Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights. At least such is the conviction underlying our Bill of Rights. That a conclusion satisfies one's private conscience does not attest its reliability. The validity and moral authority of a conclusion largely depend on the mode by which it was reached. Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government,that

justice has been done.19/ (emphasis added) Id. at 171,172

[T]hree principles of "natural justice" were stated to be that "a man may not be a judge in his own cause," that "No party ought to be condemned unheard," and that "a party is entitled to know the reason for the decision." Report of Committee on Ministers' Powers, Cmd. 4060, pp 75-80. Id. at 170, n.17.

Petitioner accused the Committee of fraud, discrimination, and improper grading procedures with respect to the administration of the FYLSX. The Committee acted as the judge in its own cause. The Committee conducted a secret hearing in which the Committee condemned the Petitioner unheard. The Committee provided no reason for its decision. The Committee's actions clearly contravene the Due Process Clause of the Fourteenth Amendment. To add insult to injury,the Supreme Court of California then refused to review the Committee's actions.

The purpose of due process in this context is to assure that the bar acts within its discretion, i.e., in a nondiscriminatory and nonarbitrary manner. (Cf. Perry v. Sindermann, supra, 408 U.S. at p. 597, 92 S.Ct. at P. 2697 [government may not deny benefit to person on basis "that infringes his constitutionally protected interests"].)

Saleby v. State Bar of California, 39 Cal.3d 547, 568 (Cal. 1985)

Finally, appellant is entitled to a statement of the final decision and reasons therefor in writing. (See In re Sturm (1974) 11 Cal.3d 258, 268-270, 113 Cal.Rptr. 361, 521 P.2d 97.) "Fundamental to the concept of procedural due process is the right to a reasoned explanation of gov-

ernment conduct that is contrary to the expectations the government has created by conferring a special status upon an individual. The very essence of arbitrariness is to have one's status redefined by the state without an adequate explanation of its reasons for doing so. . . [T]he respect for individual autonomy that is at the foundation of procedural due process imposes a distinct obligation upon the government to explain fully its adverse status decision." (citation omitted)(emphasis added)

People v. Ramirez,
25 Cal.3d 260, 276 (Cal. 1979)

The failure to make findings following formal administrative adjudication is fundamentally unfair because an already recognized right of access to a reviewing court is impaired thereby. (citation omitted)

In re Strum,
11 Cal.3d 258, 267 (Cal. 1974)

"The right to practice one's profession is sufficiently precious to surround it with a panoply of legal protection. (citation omitted)" Emslie v. State Bar of California, 11 Cal.3d 210, 226 (Cal. 1974). Why no hearing was ever provided is puzzling and deeply disturbing. What happened in this case? Petitioner clearly expected to prevail on the merits of his complaint. By not providing Petitioner with a reasoned explanation, the Supreme Court of California has acted in a discriminatory and arbitrary manner. Justice has not occurred in this case.

The Supreme Court of California abused its discretion by summarily denying review of the Committee's actions. "A state court may not,in the exercise of its discretion, decline to entertain a constitutional claim while passing upon kindred

issues raised in the same manner." Williams v. State of Georgia, 349 U.S. 375, 383 (1955). "Meaningful review requires that the reviewing court should review." Kent v. United States, 383 U.S. 541, 561 (1966) "The supremacy clause of the federal Constitution precludes a state court from arbitrarily refusing to consider 'federal questions' of law." In re Panchot, 70 Cal.2d 105, 107, n.4 (Cal. 1968).

The deprivation of a license to practice law has serious consequences. Petitioner has spent a year in the study of law as well as a great deal of money in preparation to be a lawyer. But for the illegal and discriminatory actions of the Committee, Petitioner believes that he has passed the FYLSX. It is absurd that the State of California would deny Petitioner due process in this situation.

If Petitioner were charged with a minor Vehicle Code infraction, he would have the right to a trial in the Traffic Division of the Municipal Court. Petitioner would also have appeal rights to the Appellate Division of the Superior Court. If Petitioner had a $100 contract dispute, he would have judicial recourse in the Municipal Small Claims Court as well as appeal rights for the defendant in the Superior Court.

Petitioner has spent thousands of dollars in tuition and books. Petitioner has also spent over a thousand hours of classroom and home study during his first year of law school. The Committee refuses to Certify that the Petitioner has passed the FYLSX. Yet under these circumstances, Petitioner has no right to a hearing or trial. This is unconscionable as well as unconstitutional.

II. EQUAL PROTECTION

California Business & Professions Code section 6060(g)is invalid as applied. Although the statute is neutral on its face the Committee administers the FYLSX in a discriminatory manner which violates the Equal Protection Clause of the Fourteenth Amendment.

Admission to practice law is an exercise of one of the inherent powers of the California Supreme Court. Merco v.Constr. Engineers, Inc. v. Municipal Court, 21 Cal.3d, 724, 727-29 (Cal.1978). The State Bar is a public corporation established in the judicial branch of government (California Const., art. VI, section 9; Business & Professions Code, section 6001).

The State Bar of California acts as an administrative arm of the California Supreme Court in matters concerning attorney admissions and discipline and the regulation of the practice of law in the state. In re Lacey, 11 Cal.2d 669, 701 (Cal. 1938). To assist the Supreme Court in the admission process, the Board of Governors of the State Bar, pursuant to Business & Professions Code, sections 6046 and 6046.5, has appointed the Committee to Act as the administrative arm of the Supreme Court in admission matters. In re Admission to Practice Law, 1 Cal.2d 61, 67 (Cal. 1934).

The Committee has the power to: (a) examine all applicants for admission to practice law; (b) administer the requirements for admission to practice law; and (c) certify to the Supreme Court for admission those applicants who fulfill the statutory requirements. Business & Professions Code, section 6046. Moreover, the Committee has the power to adopt such reasonable rules and regulations as may be necessary or advisable for the purpose

of making effective the requirements for admission. Business & Professions Code, section 6047.

The requirements for admission to practice law in the State of California are delineated in Business & Professions Code, section 6060. Included in both the Business & Professions Code and the Committee's rules is the requirement that first year students at unaccredited law schools take and pass the FYLSX. Business & Professions Code, section 6060(g).

One of the primary purposes of the FYLSX is to give applicants some indication of the quality of their legal education, so they can measure their likelihood of success on the general bar examination.

> There is a strong public policy in the requirement of the FYLSX. It serves a dual purpose of protecting persons who are ill-suited for a legal career from continuing to spend time, money and effort following completion of a one-year study in an effort that has little chance of success, and it affords persons who are better qualified for a legal career an opportunity to measure the quality of their training and education after the first-year study to better prepare themselves for the general bar examination.6/
>
> Bib'le v. Committee of Bar Examiners 26 Cal.3d 548, 554(Cal.1980),cert. denied, 559 U.S. 860 (1980).

Although it would appear that the FYLSX serves a legitimate state interest, the Committee has been administering the FYLSX in a fraudulent and illegal manner. "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal

hand,so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution." Yick Wo v. Hopkins, 118 U.S. 356, 373, 374 (1886).

The Rules Regulating Admission to Practice Law in California as well as the Instructions for Applicants First Year Law Students' Examination state that a 70% is a passing grade. Rule VIII, section 1(b). Only after taking the FYLSX and receiving his score, did Petitioner realize that the Committee had scaled his test score downward. Only after taking the test did Petitioner realize that applicants who take the FYLSX are given only 52.5 minutes per essay question, whereas General Bar Examination applicants are given 60 minutes to answer similar essay questions.

Upon further investigation, Petitioner discovered that for the past 8 years the average score on the FYLSX has been scaled downward by more than 3%, whereas the scores on the General Bar Examination have been scaled upward by more than 9%.

Petitioner suggests "that the Committee was engaging in improper grading in order generally to restrict admissions." Chaney v. State Bar of California, 386 F.2d 962,967 (9th Cir. 1967). The average pass rate for the past 15 FYLSXs has been under 25%. The average pass rate for the past 15 General Bar Examinations has been over 52%. Those numbers might suggest that students from unaccredited law schools are not as qualified as those who attend accredited law schools.This is nothing more than an illusion created by the Committee's invidiously discriminatory application of fabricated scaling formulas to the FYLSX.

> Even in applying permissible standards, officers of a State cannot exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory. Cf. Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220.
>
> Schware v. Board of Bar Exam. of State of N.M.,
>
> 353 U.S. 232, 239 (1957).

It was also pointed out to the Committee that there is no legal authority to scale the FYLSX. Business & Professions Code, section 6046.6(d) provides:

> Scaling may be used on the bar examination for the purpose of maintaining an examination of uniform difficulty from year to year. (emphasis added)

> We must assume that the Legislature meant the section to be read as it was written ... We cannot create ... an offense be enlarging the statute, or by inserting or deleting words, nor should we do so by giving a false meaning to its word. [Citations.] Such practice makes it impossible for anyone to rely on the written word of the Legislature and only adds confusion to the already difficult task of drafting statutes. (citations omitted)
>
> People v. Baker,
>
> 69 Cal.2d 44, 50 (Cal. 1968)
>
> When the Legislature "has employed a term or phrase in one place and excluded it in another,it should not be implied where excluded." (citations omitted)
>
> Pasadena Police Officers Assn.v.City of Pasadena,
>
> 51 Cal.3d 564, 576 (Cal. 1990)

Two of the requirements for admission to practice law in California are Business &

Professions Code, sections 6060(f) and 6060(g) which provide in part:

> (f) Have passed a final bar examination given by the examining committee. (emphasis added)
>
> (g) [H]ave passed a first-year law student's examination given by the examining committee.(emphasis added)

If the Legislature had intended scaling to be used on the FYLSX, the Legislature would have explicitly included the term in Business & Professions Code, section 6046.6(d). The Legislature could have written the statute to read:

> Scaling may be used on both the bar examination and first-year law student's examination for the purpose of maintaining an examination of uniform difficulty from year to year.

"We must assume that the Legislature meant the section to be read as it was written." People v. Baker, 69 Cal.2d 44, 50 (Cal. 1968). The Committee cannot enlarge the statute by implication. The Committee cannot imply that section 6046.6 applies to the first-year law student's examination, when the Legislature has deliberately excluded the term from the statute.

It is therefore illegal to scale the FYLSX. Any scaling formula that is applied to the FYLSX is void and of no effect. Every score that is based on a void scaling formula will result in an arithmetical error in the calculation of the total multiple-choice score.

The illegality of scaling the FYLSX was pointed out to the Committee in Owen's Petition to the full Committee on February 28, 1995. "When an official with the authority to rectify an erroneous practice receives notice of the wrongful practice and its harmful consequences, due process requires the state to provide a hearing before a further denial of

liberty can be said to be free from section 1983 liability." Haygood v. Younger, 769 F.2d 1350, (9th Cir. 1985). Since then, the Committee has continued to apply scaling formulas to the June 1995 as well as October 1995 FYLSX. Apparently, the Committee is not bound by the statute.

Not only is the Committee illegally scaling the FYLSX downward, but the Committee has arbitrarily fabricated the scaling formulas without any regard to established mathematical principles.

The purpose of the scaling formulas as stated by the Committee is to "ensure that the same score achieved on different administrations of the examination will have the same meaning ... The process involves the use of questions from a previous form of the examination on the new form of the examination, comparing the performance of the examinees on those questions on the previous and current administration to determine what adjustments, if any, must be made to make the scores on the new test comparable to those on the old, and making such adjustments."

Because no two versions of the FYLSX are identical, there is a separate scaling equation for each administration of the examination. Given the number of applicants who take the FYLSX each year, it is mathematically impossible to ever have identical formulas.

Upon investigation, Petitioner discovered that there were only four scaling formulas for the past 15 administrations of the FYLSX. These formulas appear in the same sequence, and repeat every two years. In other words, the formula (3.33 xRaw)+31 will occur every June of even numbered years. The formula (2.6xRaw)+90 will occur every June of odd numbered years.

It would be impossible to predict a scaling formula in the future because the test scores of the future FYLSX would have to be known in advance. Based on the arbitrarily chosen pattern of scaling formulas established by the Committee, Owen, in his Petition to the full Committee on February 28,1995, predicted that the scaling formula for the June 1995 FYLSX would be (2.6xRaw)+90. Amazingly, the scaling formula for the June 1995 FYLSX was (2.6xRaw)+90. The October 1995 scaling formula followed the same arbitrary pattern and was easily predictable.

The FYLSX scaling formulas generally lower the applicant's score. The scaling formulas do not "ensure that the same score achieved on different administrations of the examination will have the same meaning." The scaling formulas are arbitrarily chosen and have no rational basis to the actual performance of the examination.

The only logical conclusion then, is that the Committee has been dealing from the bottom of the deck when it comes to the FYLSX. The illegal and manipulative administration of the FYLSX by the Committee has deprived hundreds of qualified students from obtaining a legal education at unaccredited law schools.

On the other hand, it would be difficult for an applicant taking the General Bar Examination to complain that his score was scaled upward by more than 10%. A General Bar Applicant who received an actual score of 65% on the July 1994 examination would have received a scaled score of 72%, would have passed the Bar, and would now be practicing law in the State of California.

The FYLSX flies in the face of its "purpose of protecting persons who are ill-suited for a legal career." Bib'le

v. Committee of Bar Examiners, 26 Cal.3d 548, 554(Cal.1980) The Petitioner is well suited for a legal career. The question is, who is going to protect Owen from the illegal and discriminatory actions of the Committee of Bar Examiners?

Another example of discrimination is demonstrated in The Rules Regulating Admission to Practice Law in California, Rule VIII, section 1(e):

> An exempt general applicant who is unsuccessful on the First-Year Law Students' Examination is not subject to any of the sanctions, requirements, or law study credit limitations which are otherwise imposed by this Rule on an unsuccessful applicant who is required to take the the First-Year Law Students' Examination.

In other words, a student who attends an ABA accredited law school, or a California law school accredited by the Committee will receive credit for first-year law studies even though the applicant fails the FYLSX. The applicant will be able to receive credit for subsequent law studies, and the applicant will be given the opportunity to take the General Bar Examination in spite of failing the FYLSX.

It is interesting that the Committee would use the term sanctions. The FYLSX is a sanction against the student because he or she chose to attend a law school that has not been blessed by the Committee.

The Committee began to compile general statistics beginning with the June 1995 FYLSX. Of the 619 applicants that took the test, 150 or 24.2% passed.

> 13 applicants from ABA accredited law schools took the test. 0 passed or 0%
> 214 applicants from law schools accredited by the Committee took the test. 46 passed or 21.5%

377 applicants from unaccredited law schools took the test.

103 passed or 27%

It should be obvious that students from unaccredited law schools have the highest pass rate on the FYLSX. Students from unaccredited law schools who fail the FYLSX do not receive any credit for their efforts, whereas students from ABA accredited law schools and law schools accredited by the Committee are not subject to any sanctions.

There can be no rational basis for punishing students merely because they chose to attend an unaccredited law school. The Committee has been using difficult FYLSXs and unfair low passing rates to eliminate unaccredited law schools. They failed 84% of the applicants on the October 1994 FYLSX and about 76% on the June 1995 FYLSX. When so many well-educated students fail an exam, the exam and its grading become more suspect than those being examined. By denying schools upper class students, the schools cannot continue and are forced to close.

The final example of irrationality is contained in the Committee's Brief For Respondent filed with the Supreme Court in this matter on May 30,1995:

> "By requiring petitioner to take and pass the FYLSX, Respondent is in no way discriminating against him or preventing him from obtaining a legal education. Petitioner may still continue to pursue his studies and complete the Juris Doctor program at Oakland College of Law, only his earned units will not at this time be credited toward acceptance to practice law in California."

Because of this statement, Petitioner, as well as other students, have re-enrolled at Oakland College of Law. The Committee's current position is now at odds with the purpose of the FYLSX. One

of the purposes of the FYLSX is to protect persons who are ill-suited from a legal career from continuing to spend time, money and effort following completion of a one-year study in an effort that has little chance of success.

Petitioner is, however quite successful in law school. Petitioner will continue to spend thousands of hours, as well as a considerable amount of money and effort to obtain a Juris Doctorate degree from Oakland College of Law. The Petitioner could, in effect, graduate as the valedictorian and still not be able to take the General Bar Examination or practice law. The FYLSX sanction makes no sense.

> Without doubt, [liberty] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire <u>useful knowledge</u>, . . . The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. (emphasis added)
>
> <u>Meyer v. State of Nebraska</u>, 262 U.S. 390, 399-400 (1923)

How useful is a Juris Doctorate degree if you can't practice law? But for the Committee's illegal and discriminatory administration of the FYLSX, Petitioner has in fact passed. General Bar participants are given 14.29% more time to answer similar essay questions.

If the Committee adds 14% to Petitioner's essay score, and puts back the points it took when they illegally scaled his multiple-choice score downward, Petitioner would have received a score of 592

or 74%, which is clearly passing. Raw scores for the General Bar Examination in the 74% range are considered to be in the top 2 percentile.

In spite of the Committee's interference, under the guise of protecting his interest, Petitioner believes that he has a good chance of passing the General Bar Examination. All Petitioner is asking for is the chance.

CONCLUSION

Business & Professions Code, section 6060(g) should be declared void as applied, in contravention of the Equal Protection Clause of the Fourteenth Amendment.

In the alternate, this case should be remanded to the Supreme Court of California for "some form of hearing."

> As our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged. Thus it has become a truism that "some form of hearing" is required before the owner is finally deprived of a protected property interest. (citation omitted)(emphasis in original)
>
> Logan v. Zimmerman Brush Co.,
> 455 U.S. 422, 433 (1982)
>
> [A] state or its political subdivision has the authority--indeed the "constitutional duty," (citation omitted) (emphasis original) to ascertain whether it is denying its citizens equal protection of the laws and, if so, to take corrective steps.
>
> Assoc. Gen. Contr. of Cal. v. City & County of S.F.,
> 813 F.2d 922, 929 (9th Cir. 1987)

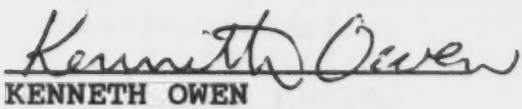
The Committee's actions are arbitrary, unreasonable, and are not supported by the evidence. Furthermore,the Committee's actions constitute a denial of Petitioner's constitutional rights under the Due Process and Equal Protection Clause of the Fourteenth Amendment.

The California Supreme Court Order denying the Petition for Writ of Review is arbitrary, unreasonable and not supported by the evidence. Furthermore, the Court's decision constitutes a denial of Petitioner's constitutional rights under the Due Process and Equal Protection Clause of the Fourteenth Amendment.

For the reasons set forth above,a writ of certiorari should issue to review the Order of the Supreme Court of California in this matter.

DATED: January 2, 1996

Respectfully submitted,



KENNETH OWEN

THE COMMITTEE OF BAR EXAMINERS OF
THE STATE BAR OF CALIFORNIA
OFFICE OF ADMISSIONS

1149 SOUTH HILL STREET
LOS ANGELES, CALIFORNIA 90015
(213) 765-1500

March 28, 1995

Assigned Petition No.A(3)
Registration No. 557709551

Kenneth Owen
6098 Slopeview Court
Castro Valley, CA 94552

Dear Mr. Owen:

During its meeting on March 25, 1995, the Committee of Bar Examiners(Committee) took up consideration of your request for reconsideration of scores you received on your October 1994 First-Year Law Students' Examination and certification of having passed said examination. The Committee reviewed your correspondence with the Honorable Michael Sweeney, Assemblymember, and Adam Ferber, Director for Examinations, and concluded that there were no arithmetic or clerical errors in the calculation of your examination grade nor was there any evidence of departure from established grading procedures. The Committee therefore declined to reconsider your examination score for the October 1994 administration of the First-Year Law Student's Examination.
I am afraid that this is the final Committee decision, and is not subject to further administrative review.

Sincerely,
"s/JOHN R. RODRIQUEZ"
John R. Rodriquez
Director
Operations and Management

APPENDIX A

SUPREME COURT FILED
OCT 4-1995
Robert Wandruff Clerk
DEPUTY

S046472

IN THE SUPREME COURT OF CALIFORNIA

KENNETH J. OWEN, Petitioner

v.

COMMITTEE OF BAR EXAMINERS, Respondent

Petition for writ of review DENIED.

"s/LUCAS"
Chief Justice

APPENDIX B